

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THEODORE LEE,

Plaintiff,

VS.

UNITED STATES OF AMERICA,

Defendant.

2:14-cv-00606-RCJ-PAL

ORDER

This is an action to recover income taxes paid by Plaintiff Theodore Lee for tax year

2006. A jury trial is presently set for March 12, 2018. Now pending before the Court is a motion to continue the trial for a period of approximately four months. (ECF No. 94.)

I. FACTS AND PROCEDURAL HISTORY

At a status conference on January 10, 2018, Mr. Lee’s attorney George Kelesis appeared before the Court and represented that he and Mr. Lee were prepared to go forward with trial on March 12. Two weeks later, however, Mr. Lee filed a motion to continue the trial based on the state of Mr. Kelesis’s health. In the motion, Mr. Kelesis represents that starting in June 2017, he has “suffered a series of adverse medical events, requiring two surgeries, a prolonged hospitalization, and an interventional cardiac procedure,” and that he “suffered an episode of recurrent symptoms” following the status conference on January 10. (Kelesis Decl. ¶¶ 3–5, ECF

1 No. 94 at 6.) As a result, Mr. Kelesis's treating physician now counsels against his participation
2 in a trial at this time. (*Id.* at ¶¶ 5–6.)

3 In response, the United States does not oppose a four-month continuance, although it
4 does note that this is Mr. Lee's sixth request for an extension of time based on the health
5 problems of his attorneys. (Resp. 2, ECF No. 96.) The United States also represents that while it
6 does not oppose Mr. Lee's present request, it "would oppose similar requests in the future." (*Id.*
7 at 3.)

8 **II. LEGAL STANDARDS**

9 **a. Motion for Continuance**

10 "A district court's decision regarding a continuance is given great deference." *Danjaq*
11 *LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001). The Ninth Circuit has identified four
12 primary factors to weigh in determining whether to grant a continuance: (1) the movant's
13 diligence in preparing for the date set for hearing; (2) the likelihood that a continuance will
14 address the need giving rise to the motion for a continuance; (3) the extent to which a
15 continuance will inconvenience the court and the opposing party, including its witnesses; and (4)
16 whether the movant will suffer prejudice if the continuance is denied. *United States v. Flynt*, 756
17 F.2d 1352, 1359 (9th Cir.), *amended*, 764 F.2d 675 (9th Cir. 1985); *see also Danjaq*, 263 F.3d at
18 961. The fourth factor is mandatory. *Id.*

19 **III. ANALYSIS**

20 **a. The Court will grant the requested continuance.**

21 Based on the factors enumerated in *Flynt* and in light of the United States' non-
22 opposition, the Court finds there is good reason to grant the requested continuance. However, the
23 Court cautions Mr. Lee and Mr. Kelesis that all further requests for extensions of time will be
24 strongly disfavored.

b. The issue of Lee's liability for tax penalties remains for trial.

In addition, the Court takes this opportunity to clarify a matter raised at the January 10 status conference. (*See* Minutes at ECF No. 93.) Contrary to statements of counsel at the conference, the counterclaim issue of liability for non-payment of tax and failure to file a timely return was not conceded by either party. Therefore, the counterclaim question remains at issue for trial.

While the Court denied summary judgment to Mr. Lee on the counterclaim for penalties, the Court did not grant summary judgment to the United States on that issue. Therefore, the issue remains for trial, including the question of whether the claim of Fifth Amendment privilege is a valid defense to the penalties for late payment and failure to file.

CONCLUSION

IT IS HEREBY ORDERED that the motion (ECF No. 94) is GRANTED.

IT IS FURTHER ORDERED that the calendar call set for March 5, 2018, is VACATED and CONTINUED to June 18, 2018, at 9:00 AM in LV Courtroom 4B.

IT IS FURTHER ORDERED that the trial set for March 12, 2018, is VACATED and CONTINUED to July 9, 2018, at 8:30 AM in LV Courtroom 4B.

IT IS SO ORDERED.

ROBERT C. JONES
United States District Judge

February 22, 2018